

Vol. III
TRANSCRIPT OF RECORD

(Pages 1051 to 1586)

Supreme Court of the United States

OCTOBER TERM, 1951

No. 428

**PENNSYLVANIA WATER AND POWER COMPANY
AND SUSQUEHANNA TRANSMISSION COMPANY
OF MARYLAND, PETITIONERS,**

vs.

FEDERAL POWER COMMISSION ET AL.

No. 429

**PENNSYLVANIA PUBLIC UTILITY COMMISSION,
PETITIONER,**

vs.

FEDERAL POWER COMMISSION

**ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PETITIONS FOR CERTIORARI FILED NOVEMBER 16, 1951

CERTIORARI GRANTED FEBRUARY 4, 1952

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DONALD GUNN.

CROSS-EXAMINATION (Continued).

[7691] THE WITNESS: To the extent Fisk's services were involved.

By MR. HALL:

Q. What specific banking services did Bertron, Storrs & Griscom furnish to McCall Ferry? A. They made arrangements for the attempt at financing under March 1st underwriting agreement, as a result of which about \$4,000,000 subscriptions of bonds were obtained, and they were subsequently joint bankers with Fisk in the March 25th underwriting.

I do not know the details of the banking services they rendered.

[7692] Q. Are you saying that Bertron, Storrs & Griscom were reimbursed under the March 25, 1905 plan for the services that it rendered under the March 1, 1905 plan? A. I don't think I could say with certainty what may have been in the minds of the people who worked out the compensation to Bertron. The facts are that he did render the services that I mentioned in connection with the March 1st underwriting agreement, and that he was compensated in the amount of 7,462½ shares as a result of the March 25th underwriting, having been successful in completing the financing of the project.

Q. Lee's documents indicate consideration being paid under the March 1, 1905, agreement. Isn't that so? A. To what Lee's documents do you refer?

Q. Those included in Part 11 of Exhibit 27, for instance. A. No, sir, I wouldn't say they indicate that because, if you will refer to Part 11 of Exhibit 27, Page 85, which is a letter from Bertron, Storrs & Griscom to Lee, Higginson and Company, Harvey Fisk are there named as bankers, and they were not in the picture as bankers until the March 25 agreement.

If you will look at page 86, which is another letter from Bertron, Storrs & Griscom to Lee, Higginson and Com-

pany, you will find Harvey Fisk again mentioned as having [7693] agreed to the compensation for Lee, Higginson.

Q. Agreed with whom? A. Agreed with Bertron, Storrs & Griscom. As I understand it, Bertron, Storrs & Griscom and Harvey Fisk and Sons were joint bankers under the March 25 agreement.

If you will look at Page 87 of Exhibit 27 there is a letter from S. R. Bertron to Lee, Higginson and Company which again mentions Harvey Fisk and Sons as being agreeable to Lee, Higginson's compensation.

The same reference is made on Page 88 which is another letter from Bertron, Storrs & Griscom to Lee, Higginson and Company. It seems to me it is perfectly clear from those references that the compensation they were receiving was coming as a result of the successful completion of the underwriting by Fisk, and was under the control of Fisk and it was necessary that the compensation be finally approved by Fisk before Lee, Higginson could be given any.

Those letters also indicate to me that there probably never was such a thing as a written agreement amongst the bankers as to what their respective compensation would be.

Q. Did Lee, Higginson and Company forego any compensation for the services rendered under the March 1, 1905 plan? A. I don't know what you are referring to, Mr. Hall. Are you referring to the fact that compensation was based [7694] on \$2,000,000 and they got somewhat more subscriptions than \$2,000,000?

Q. No. A. What are you referring to?

Q. What I am getting at, Mr. Gunn, is whether the compensation paid to Lee, Higginson and Company referred only to services rendered under the March 1, 1905 plan or the March 25, 1905 plan, or both?

THE WITNESS: I don't know just how you could assign the compensation to the services, but the facts relating to their compensation are as I stated them. It is true that

they rendered services under the March 1, 1905 plan and that those services were preserved and carried forward, and there probably were additional services under the March 25 plan. They received their compensation as a result of the successful completion of the financing under the March 25 plan.

You can assign that compensation, I suppose, to any one of those depending upon what assumptions you wish to make. However, those are the facts.

By MR. HALL:

Q. But isn't it a fact that everything Mr. Lee indicates in his affidavit, all the documents he considered, bear out the fact that he was basing his valuation on services [7695] rendered under both underwriting plans? A. I believe that is true of Mr. Lee's affidavit. I don't recall he makes any distinction between the two underwriting plans.

TRIAL EXAMINER: In your previous answer, where you said compensation was received through success of the March 25th plan, who were you talking about, Bertron, Storrs & Griscom?

THE WITNESS: No, compensation of Lee, Higginson. That was the subject of the whole line of discussion at that point, or I so understood it, at least.

By MR. HALL:

Q. Since Mr. Lee's affidavit influenced your valuation of the stock, then you applied a valuation to the services of the bankers which covered both underwriting agreements. Right? A. No, I don't think you would necessarily draw that conclusion because the successful March 25th underwriting agreement utilized the subscriptions that Lee, Higginson had previously obtained, and those subscriptions became subscriptions under the March 25th underwriting, and it seems to me it was therefore appropriate for the compensation to come for them under the March 25th underwriting since the subscriptions were a part of that underwriting.

Q. Are you saying, Mr. Gunn, you can not segregate [7696] the services one from the other? A. No, I am saying that whatever was rendered under the March 1st underwriting was equally valuable and equally valid under the March 25th underwriting.

Q. In other words, the valuations applied to both underwritings? A. Well, it seems to me there was only one successful underwriting, and that was the March 25th underwriting. You can divide it up however you wish. You have all the facts.

Q. Isn't it a fact that your valuation would not be the same if you ignored the March 1, 1905 services? A. I don't know whether it would or not. I don't know what Mr. Lee would say about that. My difficulty would be this: It was necessary at one time or another to get those subscriptions. Now,—

Q. Are you now referring to subscriptions obtained by Lee, Higginson under the March 1, 1905 plan? A. I am referring to all the subscriptions obtained by Lee, Higginson. It was necessary to have the Lee, Higginson subscriptions to complete the underwriting, as I see it. The subscriptions were obtained by Lee, Higginson and were used in the March 25th underwriting. I don't see that it makes any difference at what particular day in the month of February or March the subscriptions were obtained. They were still equally useful under the March 25 plan. It just [7697] doesn't seem to me that the compensation would necessarily change. Indeed, I don't see why it should change at all, that is the compensation to Lee, Higginson should change at all, so long as Lee, Higginson obtained that number of subscriptions and they were used in the successful underwriting.

Q. What you are saying, Mr. Gunn, amounts to this: That you can not say what amount—

Strike that, please.

What you are saying is that you can not ignore the services rendered under the March 1, 1905 plan? A. No,

I am not saying that. I am saying just what I previously said.

. . .

By MR. HALL:

Q. Now, Mr. Gunn, if you had limited yourself to the services rendered under the March 25, 1905 plan, would you [7698] still have arrived at a valuation of \$25 per share of the common stock?

. . .

THE WITNESS: Do you include in that question, Mr. Hall, the assumption that Lee, Higginson obtained, under the March 25th plan, the same number of subscriptions that they in fact turned in?

By MR. HALL:

Q. No. A. Then your question relates to the subscriptions, whatever the number may have been, that they finally did obtain directly under the March 25th underwriting?

Q. That is right. A. No, I don't think—stock value?

Q. Yes. A. Yes, stock value on a per-share basis may have been the same, although I don't think Lee, Higginson would have gotten 5,000 shares of stock for that little bit of service.

Q. Did Bertron, Storrs and Griscom undertake to sell a specific amount of bonds and to be liable themselves for [7699] any unsold balance? A. I don't know.

Q. Isn't it a fact that Bertron, Storrs & Griscom merely acted as agents to sell bonds with no liability to take any of the unsold bonds? A. I don't know what the liability of Bertron, Storrs & Griscom was under the March 25th underwriting, except what Fisk said, which was to the effect that Bertron was joint account with him. What the arrangement may have been for the sharing of the responsibility between Bertron, Storrs & Griscom and Lee, Higginson I do not know.

Q. Did you examine the books and records of Bertron, Storrs & Griscom? A. I believe I saw the records of

their purchase and sale of stocks. As I recall it those are the only books they had.

Q. Included in Exhibit 27? A. Those are included in Exhibit 27.

Q. Did the books and records of that firm show the nature and extent of the services performed? A. No, sir. As I recall it, I understand from Mr. Adams, the records which would have shown that previously had been destroyed.

Q. Did the records of Bertron, Storrs & Griscom show any valuation for its banking services? [7700] A. No, not that I ever saw.

Q. Did they reflect the cost of the banking services? A. No, not that I know of.

Q. Did the books and records of McCall Ferry or Susquehanna Contracting Company show the nature and extent of the services performed by Bertron, Storrs and Griscom? A. Not completely. They showed certain services, I believe, directly and indirectly.

THE WITNESS: Are you speaking of banking services there, Mr. Hall?

By MR. HALL:

Q. Yes. I understood you to say those were the types of services Bertron, Storrs and Griscom rendered. A. I think they rendered some other services other than banking services. What I had in mind when I started the answer to that question was that Bertron, Storrs & Griscom, I believe, assisted Fisk in obtaining, I believe, the Pullen option and, as I recall it, also some of the securities that passed under the Harlow-McGaw transaction along with the land, and, of course, Bertron appears to have been active and interested in the project along with Fisk throughout the development period.

[7701] Q. But if they rendered any of this incidental service you referred to, isn't it a fact that the 7462½ shares were in no way related to anything other than banking services? In other words, you are claiming the 7,000-plus shares

as representing cost of underwriting bonds. A. I think it is primarily compensation for the cost of underwriting bonds. Now, it is a fact they rendered these other incidental services, and I, of course, don't know what was in the minds of Bertron and Fisk when they agreed to that amount of shares. It has been my conclusion that it was primarily for banking but with recognition of the fact there was certain incidental service rendered—

Q. Haven't you in your Exhibit 26 and in your claimed cost treated all of the 7,000-plus shares as compensation for banking services? A. Yes, sir, I have. But in Exhibit 26 I have also stated these incidental services which Bertron rendered. I didn't have any basis for making a division between those because I didn't know the extent of them. So as an alternative I have treated the total compensation to Bertron as banking services.

Q. You don't even know whether Bertron, Storrs and Griscom were to be compensated for those incidental services. Isn't that so? A. That is right. I can't say that their compensation [7702] was in specific recognition of any of those incidental services.

Q. You have never found any valuation of the services of Bertron, Storrs and Griscom. Isn't that right? A. That is correct.

Q. Do you know the costs to Bertron, Storrs and Griscom of the services they may have rendered? A. No, I do not except in purchasing the Pullen option for which they were reimbursed by Harvey Fisk and Sons.

Q. Was there any contract between McCall Ferry and Bertron, Storrs and Griscom making McCall Ferry liable for the payment of services? A. Not so far as I know.

Q. Have you found any evidence that McCall Ferry ever contemplated paying cash for any services to be rendered by Bertron, Storrs and Griscom? A. You mean as compensation to Bertron, Storrs and Griscom?

Q. Yes, for banking services. A. No.

Q. Your answer would have been the same if I had included Susquehanna Contracting Company along with McCall Ferry? A. Yes, sir.

[7703] By MR. HALL:

Q. Did you attempt to get a valuation of the banking services of Bertron, Storrs and Griscom from that firm or any of the surviving partners? A. Yes, sir.

Q. Whom did you contact? A. I contacted Mr. J. O. Adams, Secretary of the firm, and asked him to in turn contact Mr. Griscom.

Q. Did you contact any one prior to your contact with Mr. Adams? A. No, sir.

Q. When did you contact Mr. Storrs? A. It appears I contacted Mr. Storrs—I don't know what the date of the letter was. Page 188 of Exhibit 27 shows that I first contacted Mr. Storrs on July 18, and that is contained in the first line of Mr. Storrs' reply to the company, which reply is dated July 21, 1938.

Q. Was that prior to your contact with Mr. Adams? A. No, it was subsequent to it. I don't know just when the first contact with Mr. Adams was, but the first letter, I believe, shown in Exhibit 27 on page 184, it being a letter from the company to Messrs. Bertron, Griscom and Company, was dated May 23, 1938, and it is clear from the letter that I had previously written to and talked to Mr. Adams—that is [7704] previous to the date of May 23, 1938.

Q. What was the purpose for your contacting Mr. Adams? A. He was the Secretary and Treasurer of Bertron, Storrs and Griscom.

Q. Was Mr. Adams the go-between between you and Mr. Griscom, so to speak? A. What do you mean by "go-between"?

Q. In other words, you contacted Mr. Adams and he, in turn, contacted Mr. Griscom. A. Yes, sir, that is right. I had a little difficulty seeing Mr. Griscom, and more diffi-

culty getting him to do anything. I think he had previous experience in the Conowingo case.

. . .

By MR. HALL:

Q. The fact is that you failed to get any statement from either Mr. Storrs or Mr. Griscom covering the early history [7705] of the McCall Ferry project. Right? A. Yes, sir, that is correct. Mr. Storrs' reply to my inquiry in that respect is shown on page 188 of Exhibit 27 and the reply of Mr. Griscom is shown on page 193 of Exhibit 27.

Q. Did you and Mr. Adams prepare this statement for Mr. Griscom's signature as shown on pages 194 and 195 of Exhibit 27? A. Yes, sir.

Q. Why did you deem it necessary to prepare a statement for his signature? A. Because Mr. Adams said if we didn't do it we wouldn't have any chance of getting a statement from him. We prepared the statement and then didn't get any statement from him.

Q. One of the things you asked Mr. Griscom to say in his proposed statement was:

"My firm commenced as head of the underwriting group but eventually took a position junior to that of Harvey Fisk and Sons who took over leadership of the financing."

. . .

MR. KING: The document speaks for itself. I see no purpose in the question.

TRIAL EXAMINER: He has not finished.

MR. KING: I am sorry.

[7706] By MR. HALL:

Q. Mr. Griscom wouldn't go along with you in that connection, would he, Mr. Gunn? A. I don't think that is a fair conclusion.

Q. He didn't sign the statement; isn't that right? A. That is quite true, but in failing to sign it he said he had

no quarrel with any part of the statement, and any part of the statement includes that. He simply said he didn't have a recollection, and I believe he told Mr. Adams he didn't want to be involved in any more of these things.

Q. Having no recollection, Mr. Griscom was unable to subscribe to any statements—right? A. Well, as I read his reply he said simply that he didn't have enough recollection to justify him in making the statement.

Q. Are there any other letters covering your attempt to get statements from Bertron, Storrs and Griscom not contained in Exhibit 27? A. I don't know whether or not there are, Mr. Hall. I would have to check the file.

Q. Did you submit a participation to Mr. Griscom or Mr. Storrs or Mr. Adams? A. I submitted all of the documents and facts relating to their participation to Adams. I don't recall whether I [7707] submitted a specific participation or not.

When I first went to the Bertron and Griscom Company to attempt to get a statement, as I recall it, it was my hope of getting a statement from Mr. Bertron, who then was alive. When I went there Mr. Bertron had been taken sick a few days earlier. I was instructed by Mr. Adams to come back in a month or six weeks or some such. Before I got a chance to go see him he died. It was Mr. Bertron who was active in, and who had handled, the McCall Ferry transaction from Bertron, Storrs and Griscom's New York office while Mr. Griscom had been handling the end of their business which was located in Philadelphia.

As I understood from Adams, he had a limited knowledge of the Susquehanna River transactions of Bertron, Storrs and Griscom.

I made several attempts to obtain from Mr. Adams first an opportunity to talk to Mr. Griscom, and he wasn't disposed to talk to me.

I asked Mr. Hutchinson, I believe on one occasion, to go to Mr. Griscom and intercede, and Mr. Hutchinson sent me back a cryptic report that Griscom said he wasn't going

to be involved in any more of these original cost determinations.

Then I made an attempt through Mr. Adams to see Mr. Griscom. That was not successful, but Mr. Adams thought Mr. Griscom, if he, that is Adams, would vouch for the [7708] authenticity of the facts submitted to Mr. Griscom, that Mr. Griscom would sign the statement which is shown on page 194. As I recall it Mr. Adams was prepared to present to Mr. Griscom and discuss with him all of the facts, although I don't recall we ever had those made up in participation form.

Q. Did you ask Bertron, Storrs and Griscom for a valuation of their banking services? A. Not directly as such. What I was seeking to obtain from Mr. Griscom was his opinion as to what the stock was worth at the time his firm accepted it.

It very well may be that he would have approached his estimate of the worth of the stock through banking services, but I didn't indicate to him how I wanted him to make the determination, and for the reasons I have indicated, because of his reluctance to do anything at all.

Q. How about Lee, Fisk, and the others? Did you indicate how they were to value their services? A. No, I don't believe I did. I believe they rather, in the case of Lee and Fisk,—well, I can't say, I don't know how the question of valuing their services came in. In the case of Lee I discussed our problem with him and explained to him my understanding of the intentions of the original cost requirements, and I don't know how he came to the conclusion that it was necessary to value it through his [7709] services, except I believe one of the things which influenced him is the fact that the stock ultimately had no value.

As to why Mr. Fisk approached it from that point of view I don't know. That was something which was handled directly with Mr. Fisk by Mr. Cole, and I never knew the details of how the valuation was arrived at.

Q. What valuation did you place on the services of Bertron, Storrs and Griscom? A. I didn't place any.

Q. What valuation do you claim in your original cost statement? A. As a result of having arrived at the conclusion that the common stock is worth \$25. a share I valued the shares which were given in compensation at \$186,562.50.

Q. In other words, you multiplied \$25 times 7,462 and a half shares of common. A. That is correct.

Q. Why did you place a higher value on the services of Bertron, Storrs and Griscom than those of Lee, Higginson and Company? A. Because Bertron, Storrs and Griscom received a higher compensation for their services than did Lee, Higginson.

Q. In other words, that was merely the mathematical [7710] result of the number of shares which you say each received. A. That is correct.

Q. Didn't Lee, Higginson and Company sell several times as many bonds as Bertron, Storrs and Griscom did? A. I think it can appropriately be concluded they sold more than Bertron, Storrs and Griscom did. Whether it was several times or not I don't know because I never have been able to identify who actually sold all of the bonds.

. . .

By MR. HALL:

Q. Isn't it your position that Lee, Higginson and Company took a greater risk than Bertron, Storrs and Griscom under the bond and stock agreement of March 25, 1905?

A. As regards the guaranteeing of subscriptions to bonds that is correct. That is as regards the guaranteeing of them to Knickerbocker Trust Company, the guarantee under the deferred subscriptions, which were pledged with Knickerbocker Trust Company under the loan.

Q. Wouldn't that indicate that Bertron, Storrs and Griscom were entitled to much less than 5 points commission if that amount is supposed to measure the risk of Lee, Higginson and Company in connection with procuring bond subscriptions? [7711] A. Not necessarily.

Q. How do you arrive at that conclusion, Mr. Gunn?

A. Because it seems to me that Bertron, Storrs and Griecom might have performed other banking services and might have had other risks and responsibilities, for example, as joint bankers with Fisk which Lee, Higginson and Company didn't have, and it is also my understanding that it is a banking practice, although I am not a banker, that people who originate transactions in the banking sense also are entitled to some compensation for that fact.

Q. What specific banking services did Lee, Higginson and Company furnish to McCall Ferry? A. I don't know in any more detail than is included in Exhibits 26 and 27.

• • •

[7718] By Mr. HALL:

Q. Mr. Gunn, do you have any evidence which would indicate that Lee, Higginson and Company were ever called upon to make good under any guarantee in connection with the financing? A. I have the evidence in that respect which was included on the tabulation which I previously mentioned as having been obtained from Irving Trust Company and which was recently given to the staff and which is also included as a document in the Lee, Higginson participation. As I recall there, for the purpose of the Knickerbocker Loan, they were required to guarantee several subscribers to McCall Ferry bonds, which subscriptions were presumably obtained by Lee, Higginson and Company, and they were also subscribers in the amount, I believe, of \$2,300,000 for the purpose of implementing the guarantee, or the security pledged under the Knickerbocker Trust Loan.

Does that answer your question?

Q. Not exactly, Mr. Gunn. My question was did they ever actually make good any guarantee under the transaction of which you have spoken or any other transaction.

[7719] A. You mean was the firm as such ever required to—

Q. Make payments under the so-called guarantee you referred to? A. I don't believe I quite understand. Is your question this: Did any of Lee, Higginson's subscribers default and were they for that reason required to assume the subscribers obligation? Is that your question?

Q. Yes. A. I don't know whether they were or not.

Q. Isn't it your understanding that the subscribers were going to save Lee, Higginson and Company harmless from liability under the subscription agreement? A. May I have it read?

(Question read.)

THE WITNESS: Mr. Hall, you will have to be a little more definite about that, and for this reason: As I understand it, Lee, Higginson became a subscriber as a firm under the Harvey Fisk and Sons underwriting agreement; and then Lee, Higginson in turn made an underwriting agreement of their own under which they obtained subscriptions, which I suppose you might term a subsidiary underwriting agreement now. Which one of those are you referring to in your question?

By MR. HALL:

Q. I show you part 4 of the participation submitted [7720] to Mr. Lee. To what does that document refer?

A. This document appears to be a subscription form for bonds and preferred stock of McCall Ferry Power Company, although in the document it is called Susquehanna Power Company, and the Susquehanna Company was an early name for McCall Ferry Power Company. This document is the Lee, Higginson subscription form upon which they obtained subscriptions, as I understand it, after the Lee, Higginson firm had itself subscribed to the Fisk financing presumably on the Fisk underwriting form.

Q. This document bound the subscribers of Lee, Higginson and Company to the extent stated therein, right?

THE WITNESS: Yes, sir. I understand "the extent stated therein," to cover a relationship between Lee, Higginson and Lee, Higginson subscribers, which arose as a result of Lee, Higginson as a firm having subscribed to bonds in the Fisk underwriting, presumably under the Fisk subscription contract. Therefore, this document that you have shown me describes the relationship between Lee, Higginson and Lee, Higginson customers, but not the relationship between Lee, Higginson and Fisk or the relationship between Lee, Higginson and Knickerbocker Trust Company as respects those subscriptions obtained by Lee, Higginson, payment of which was [7721] deferred and which was pledged under the Knickerbocker loan arrangement.

By MR. HALL:

Q. In other words, you are saying that if Lee, Higginson and Company incurred any liability by reason of its relationship to Harvey Fisk and Sons, that liability could be passed on and assumed by the subscribers of Lee, Higginson and Company? A. Yes, I believe that is the theory. Of course, it is only a theory, and if the subscribers didn't make good Lee, Higginson still would be in trouble with the subscriptions. I take that to be the reason that Knickerbocker Trust Company, in working up their settlement computations, which are also included in the Lee, Higginson participation, required that as a condition precedent to an extension of the Knickerbocker Trust loan, Lee, Higginson, as a firm, guarantee to make good on the subscriptions that had been obtained by Lee, Higginson from Lee, Higginson's own customers.

Q. By that you mean that the customers of Lee, Higginson and Company, as well as Lee, Higginson and Company, were obligated to Knickerbocker Trust Company? Is that what you are saying? A. Not quite. What I am saying is this: That apparently Knickerbocker Trust Company took the position that they [7722] would look directly and solely to the firm of Lee, Higginson for se-

curity under the Knickerbocker Trust loan, thus leaving it up to Lee, Higginson as to what they might do with respect to the relationship between the firm of Lee, Higginson and Lee, Higginson subscribers. Maybe that is the same thing but it seems to me they are just slightly different.

[7723] Q. Did Lee, Higginson and Company, or any representative thereof, show you any valuation of the banking services of that firm? A. No, sir, nothing more than stated in Lee's affidavit.

Q. Did anyone show you the cost to that firm of its banking services? A. No, sir.

Q. Do you know what that cost was? A. No, sir.

Q. Did the books and records of McCall Ferry or Susquehanna Contracting Company show the nature and extent of the services performed by Lee, Higginson and Company? A. Only to the limited extent that is shown in Exhibit 27 and in the company's records which have been available to the Commission Staff.

Q. Did the McCall Ferry or Susquehanna Contracting Company show any valuation of the Lee, Higginson and Company banking services? A. No, sir, except to the extent that Lee, Higginson received the securities and compensation for them.

Q. Was there any contract between McCall Ferry or Susquehanna Contracting Company and Lee, Higginson and Company making McCall Ferry liable for the payment of banking services? A. Not so far as I know.

[7724] Q. Have you found any evidence that McCall Ferry or Susquehanna Contracting Company ever contemplated paying cash for any of the banking services to be rendered by Lee, Higginson and Company? A. No, sir.

. . .

[7742] By MR. HALL:

Q. Mr. Gunn, I believe you have selected July 15, 1905 in your computations as the time of the issuance of the bonds. Right? A. I think it was June 15.

Q. Yes, June 15. A. That is right; yes, sir.

Q. As of what date were the bonds actually issued to the subscribers? A. You are referring there to people beyond the bankers when you speak of "subscribers"?

Q. Yes.

THE WITNESS: The \$250,000 par value of bonds which went to Harlow-McGaw in exchange for their property was issued [7743] in June, 1905. The bonds to the non-deferred subscribers were issued about February, 1908, and the bonds to the deferred subscribers were apparently issued about November, 1908.

MR. KING: By "issued", Mr. Hall, you mean mechanical passage of the certificates?

MR. HALL: I mean the time at which the bonds were turned over to the subscribers.

[7744] By MR. HALL:

Q. Mr. Gunn, why did you choose the date of June 15, 1905 to begin the amortization of bond discount expense, when the bonds were not issued until 1908? A. That is the date the bonds were issued by McCall Ferry Power Company I believe to Susquehanna Contracting Company, or at least as I recall it is the date on which interest on the bonds began accumulating.

By MR. HALL:

Q. When was interest first paid on bonds issued to subscribers? A. As I understand it, according to the underwriting agreement of March 25, they were to be credited, the subscribers I mean were to be credited, with interest from the date of their payments, the first payment of which was shortly after issue in the case of the deferred subscribers.

Q. Isn't it a fact, Mr. Gunn, that the subscribers were to be paid interest only on the advancements made? A.

Yes, I think that is right. That is all they were entitled to, I believe, under the underwriting agreement.

Q. It had nothing to do with bond interest. [7745] A. It seems to me it did. It seems to me it was at the rate of bond interest.

Q. And that is the only relation it had?

THE WITNESS: The specific relation in the terms of the underwriting agreement are given on page 82 of Exhibit 27, and reads as follows:

"The price is \$900, and accrued interest, if any, for each \$1,000 bond, together with preferred stock of the par value of \$450, and is payable to the bankers at their office No. 62 Cedar Street, New York City, in installments of not more than 20 per cent each, the first upon five days' notice on or after allotment, and the others upon call of the bankers on 20 days' notice. The subscribers are to be credited with interest at five per cent per annum on all installments from times of payment until delivery of bonds and stock."

If you will refer to the tabulation which was obtained from Irving Trust Company, successors to Knickerbocker Trust Company, you will find that in the settlement at the time of delivery of bonds that credit of interest was treated as bond interest, the latter being further evidence of the fact it was construed as bond interest.

TRIAL EXAMINER: The rate on the bonds was what?

[7746] THE WITNESS: Five per cent.

TRIAL EXAMINER: Same rate of interest, then, on both instances?

THE WITNESS: Yes, sir, and in the instance of the settlement by Knickerbocker Trust Company the interest that had been credited to these advances was offset against the coupons on the bonds, thus bringing the relationship of the two into what seems to me to be complete consonance.

TRIAL EXAMINER: The interest which accumulated on the deposit by the subscribers, payments by the subscribers on call, was not actually paid in cash but later on paid by bond coupons?

THE WITNESS: No, it was later on used to reduce the final payment of the bond subscribers.

I believe another fact, Mr. Examiner, that ties it in closely is the fact that while the people who advanced the money received a five per cent credit the cost to Susquehanna Contracting Company of the money obtained from Knickerbocker Trust Company was nominally six per cent, with a pre-payable bonus to Knickerbocker Trust Company which made the cost of that money about 6.9 per cent.

. . .

By MR. HALL:

Q. Mr. Gunn, isn't it a fact that in making the [7747] settlement Knickerbocker Trust Company calculated only the accrued bond interest from the date next preceding the date of settlement? **A.** I think that is correct. The exact calculation is shown on the tabulation which was obtained by me from Irving Trust Company, and is included as a part of the Lee, Higginson participation.

. . .

By MR. HALL:

Q. The amount upon which interest was credited was less than the face value of the bonds; right? **A.** Yes, to be sure. Interest was credited on the payments as they were made. In the case of deferred bond subscribers, the payments were made on 20 per cent calls.

Q. In other words, the subscribers did not receive the full coupon rate prior to the date of issuance of the bonds to the subscribers.

. . .

THE WITNESS: Certainly they did. They received the full five per cent. That is the coupon rate.

[7748] By Mr. HALL:

Q. The full five per cent on the face value of the bonds? A. No, full five per cent on the money they had advanced.

[7769] By Mr. HALL:

Q. Mr. Gunn, I believe you previously testified that Hillside Water and Power Company and Susquehanna Water and Power Company were paper companies with no funds and no assets; right?

THE WITNESS: That is substantially correct. I believe probably the qualifying shares were paid for, but aside from that they had no assets that I know of.

By Mr. HALL:

Q. Since these companies were organized by Hutchinson, isn't it reasonable to conclude that Hutchinson supplied the funds required to create them?

[7770] THE WITNESS: I don't know, but I think it is a reasonable conclusion for whatever that is worth.

By Mr. HALL:

Q. You have also assigned a cash value of \$25 per share to the ten incorporators' shares; right? A. Yes, sir, I did that. I believe that is correct. I used \$25 a share consistently for all valuation of McCall Ferry Power Company stock which entered into the determination of original cost.

Q. Have you included the \$250 cash value for these shares in your original cost determination? A. Yes, sir.

Q. What do you claim the \$250 represents?

MR. KING: \$250?

MR. HALL: Yes, ten incorporators' shares at \$25. per share.

THE WITNESS: It represents the cash value of the stock.

By MR. HALL:

Q. How have you classified the \$250 for the purposes of your claim? A. Included in organization expense.

Q. For what company does the \$250 represent organization expense? A. Two companies which were merged to create McCall [7771] Ferry Power Company.

Q. Wasn't Hutchinson reimbursed for the expenditures in organizing those companies by the \$750,000 cash? A. I don't know whether he was or not.

[7772] Q. Will you refer to Account 301 of the uniform system of accounts? A. Yes, sir.

Q. Doesn't Note "B" of Account 301 require you to exclude the cost of organizing predecessor companies when the cost of reorganization is included?

. . .

THE WITNESS: You don't mean cost of reorganization, do you, Mr. Hall? In this instance it was a consolidation, and I think that is what you refer to.

By MR. HALL:

Q. Isn't it a fact, Mr. Gunn, that Note "B" of Account 301 requires that the cost of organizing predecessor companies is to be excluded if the cost of reorganization is included in the plant account? A. The account states that and states also that mergers and consolidations must be excluded, but I don't think the words used in that account have any application whatever to the situation in McCall Ferry Power Company respecting the Hillside and the Susquehanna Companies. It seems to me it is wholly inapplicable.

Q. Why? A. Because, as I understand it, it was a legal necessity to create those two companies as a condition precedent [7773] to the creation of the McCall Ferry Power Company, and if that be true it clearly does not fall within the meaning of Note "B" so far as I can tell.

Q. Nevertheless, the \$250 we have been discussing represents the cost of organizing predecessor companies?

A. No, I don't think it represents that.

Q. What do you think it represents? A. It represents the market value of the qualifying shares in those companies at \$25 a share.

Q. What is the basis for the claim for the market value of those shares? A. Because that is, as far as we know, the best measure of organization expense.

Q. Why do you include the cost of organizing those two companies in Penn Water's organization expense? A. Because they were a legal pre-requisite to the creation of both McCall Ferry Power Company and Pennsylvania Water and Power Company. Without the incurring of that expense neither corporation could have existed. That is my understanding of it, at least.

Q. Incurring of what expense? A. Incurring of the expense that I have imputed to the organization of the Hillside and the Susquehanna Company and as measured by the market value of the qualifying shares in those companies. Incidentally, I don't think that represents [7774] more than a small fraction of the cost of organizing the companies but at least that is all we have included in the original cost for it.

Q. In other words, you have included the amount of \$250 in lieu of actual cost, right? A. I have included it as a part of the organization expense of subsidiary companies, being Hillside and Susquehanna Companies, which were necessary to be organized before either McCall Ferry Power Company or Pennsylvania Water and Power Company could be created, as I understand it. It was a legal matter and a legal requirement, as I understand it.

Q. Do you know the actual cost of organizing Hillside and Susquehanna? A. No.

TRIAL EXAMINER: Where did you get the figure of \$25 a share?

THE WITNESS: It, Mr. Examiner, represents the general conclusion as to the value of McCall Ferry Power Company common stock which we have concluded was \$25 a share and the shares we are now discussing are the qualifying shares which, for the want of a better figure, I also valued at \$25 a share in the interest of consistency in the valuation of all of McCall Ferry's common stock.

By MR. HALL:

Q. Mr. Gunn, I believe you have indicated that it was [7775] decided to build a dam of 185 foot elevation about August 8, 1905? **A.** The recommendation for a dam at that elevation by the board of advisory engineers was on the date of August 7, 1905.

Q. And it was decided to build a dam of 165 foot elevation in June of 1906, right? **A.** Yes, sir, June 19, 1906.

. . .

By MR. HALL:

Q. So, Mr. Gunn, prior to August 8, 1905, the plans called for the construction of a dam of 155 foot elevation, right? **A.** Yes.

. . .

[7776] **Q.** Do you want to add something? **A.** Yes. Various elevations, I believe, had been considered prior to August 8 —

. . .

THE WITNESS: What is bothering me, Mr. Examiner, is that I have given a categorical answer that is not correct without qualification.

TRIAL EXAMINER: Very well.

THE WITNESS: The qualification would have to be this: At various times prior to August 8th various elevations had been considered, but at the time the financing was undertaken the elevation then in contemplation was 155.

5

By MR. HALL:

Q. And financing was based on elevation 155, a dam with elevation 155? A. Yes, sir.

[7777] Q. Did Mr. Hutchinson, by reason of his option of April 14, 1903, with Harlow-McGaw, secure the right to flood the canal above McCall Ferry, above the McCall Ferry site?

. . .

THE WITNESS: Yes, sir, but there were several obligations attached to the securing of that right.

By MR. HALL:

Q. As a result of that agreement isn't it then a fact there was then no barrier to Hutchinson's proposed development?

. . .

THE WITNESS: That is correct, if the terms of that agreement were carried out, both as regards Harlow's obligations and Hutchinson's obligations, there would have been no barrier so far as Harlow-McGaw were concerned. [7778] Q. Hutchinson's option still was in effect when the financing for the 155 foot dam was completed; right? A. Hutchinson's option with Harlow-McGaw?

Q. Yes. A. Yes, sir.

. . .

By MR. HALL:

Q. Isn't it a fact, Mr. Gunn, that for the purpose of the development contemplated in March of 1905, Hutchinson's option covered all the properties necessary for that development, referring to the option with Harlow-McGaw?

. . .

THE WITNESS: Yes, at least that appears to have been the conclusion of those who were involved in the transaction at that time.

. . .

[7779] I think I had better limit that answer to this extent to say that Hutchinson's option included all of the

property owned by Harlow-McGaw necessary to the project then contemplated.

By MR. HALL:

Q. Then how can you explain the total purchase of the Harlow-McGaw properties by Fisk for McCall Ferry?

A. There are several reasons for it.

Q. Will you indicate those reasons? A. Well, one of the reasons is that by the purchase of that McCall Ferry Power Company came into substantial control of the whole of the potentially valuable section of the Susquehanna River from Columbia to Tidewater, that is potentially valuable for water power developments.

In addition to that they escaped very large, or what may have become very large, costs to them in satisfying their obligations under the agreement with Harlow-McGaw.

Q. What are the large obligations to which you refer, Mr. Gunn? A. The construction, and I believe also the

operation of locks through the Holtwood dam, the construction, and, as I recall it, the operation of locks at the head of the reservoir of the Holtwood dam reservoir for re-entrance into a canal, and the provision of alternative route for Harlow- [7780] McGaw's railroad, that is a route alternative to the canal towpath that he was then considering.

Q. Those expenditures would be necessary only if it were decided to make the river navigable and construct the railroad; right? In other words, Mr. Gunn, the expenditure could be deferred until that was decided upon.

A. Mr. Hall, I have not read sufficiently recent the agreement, but it is my impression Harlow had the right to insist upon the performance of those conditions at will. If you wish I will read the agreement and ascertain if that is a fact.

Q. No, that is not necessary at this particular time, Mr. Gunn. But the expenditures to which you referred would be necessary only after Harlow-McGaw had indi-

cated the desire to carry out the canal and railroad plan; right?

THE WITNESS: No, that is not my recollection.

By MR. HALL:

Q. What is your recollection? A. My recollection is that Harlow-McGaw could insist [7781] upon compliance at any time.

As I said, to make certain of that I will have to read this agreement which is part 2 of Exhibit 27.

Q. What amount have you included in your original cost determination for the Harlow-McGaw lands?

[7782] THE WITNESS: \$450,432.

By MR. HALL:

Q. Did you consider that the amount of \$13,772.22 which you claim in connection with the Pullen option is a cost of the Harlow-McGaw lands? A. I don't know how I considered it. I considered it just as it is set forth on page 53 of Exhibit 26, namely, that it was a cost of the Pullen options. I had no occasion to connect it up with anything else.

Q. It is a fact that option was purchased in order [7783] to acquire the option of the Harlow-McGaw lands?

A. I don't know. You will have to draw your own conclusion.

Q. Are you saying that the amount of \$450,432— Will you withdraw that last question, please?

Didn't you have to determine what the amount of \$13,772.22, relating to the Pullen option purchase, represented in order to include it in your claim cost? A. Certainly I determined what it represented. It is fully explained in Exhibit 26.

Q. What does it represent? A. It represents cash of ten thousand dollars, interest of \$22.22, and 150 shares

of common stock at \$25, that being \$3,750, making a total of \$13,772.22.

Q. How did you classify the total amount of \$13,772.22 in your original cost determination? A. As land cost.

Q. And what lands did you associate that amount with? A. None, I just put it in the lands account. It was not necessary to associate it with any land.

Q. What lands were acquired in return for the \$13,772.22? A. The Pullen option.

Q. Is that land cost? A. Land right; cost of land right.

[7784] Q. What land does it cover? A. The option speaks for itself. It is in Exhibit 27. Do you want me to read it?

Q. Don't you know without reading it? A. No. If you want to know what it is I will read it into the record.

Q. Didn't you have to know what land it related to in order to determine your cost? A. Yes, sir, I knew exactly what was in the Pullen option seven or eight years ago but I don't remember now.

Q. Are you saying, Mr. Gunn, that you do not now know whether or not it is proper land cost? A. I certainly am not saying that. I am convinced that it is thoroughly proper land cost.

Q. Then, what land is it a proper cost of? A. It is a proper cost of the land rights which went into the creation of the McCall Ferry development.

Q. Which particular tract of land? A. I didn't associate it with any particular tract of land. But as I remember about a week ago I testified it was associated with an option over the Welsh properties, I believe, and an option over the Harlow-McGaw properties.

Q. In other words, you considered that amount to be part of the cost of the Harlow-McGaw properties? A. You may so construe it if you wish. All I did with [7785] it was to determine what the amount was and put it in McCall Ferry Power Company's land cost account.

Q. You don't have a copy of the option held by Pullen in your Exhibit 27, do you? A. No, I believe I was mistaken in referring to Exhibit 27. There is at least a summary of it in Exhibit 26.

Yes, Mr. Examiner, I find that the agreement itself is included beginning at page 94 of Exhibit 27.

TRIAL EXAMINER: In part 2 of Exhibit 27 is the acquisition by Hutchinson of an option on the Harlow-McGaw property. Is that correct?

THE WITNESS: Yes, sir. That is not exactly right, Mr. Examiner. It is the right to flood any of Harlow-McGaw's properties that would be flooded by Hutchinson's proposed dam at McCall Ferry, whatever that would be.

TRIAL EXAMINER: And that right is the right which is represented by your amount of 450,000-odd dollars on page 3 of Exhibit 26?

THE WITNESS: No, sir. That right is the right that is reflected by the necessity to build locks through the dam to provide Harlow with another railroad right of way and to provide entrance locks to a canal above, at the upper reaches, of the Holtwood reservoir.

TRIAL EXAMINER: What covers the Harlow-McGaw properties and rights?

[7786] THE WITNESS: Of what do they consist?

TRIAL EXAMINER: No, what document embraced in Exhibit 27 covers the acquisition of Harlow-McGaw's properties and rights?

THE WITNESS: Part 15 of Exhibit 27, which is page

• 125.

TRIAL EXAMINER: And the rights conferred by that agreement between McGaw, Harlow and Houseman on one hand and Harvey Fisk and Sons on the other, is what you have valued at 450,000-odd dollars?

THE WITNESS: Yes, sir, the 450,000-odd dollars being the consideration paid for those rights.

By MR. HALL:

Q. Does the amount of \$450,432 represent the market value of the Harlow-McGaw properties at the time of their acquisition? A. Mr. Hall, by "market value" are you referring back to the definition of market value you gave me several days ago, namely, a willing seller will accept and a willing buyer will pay if both were equally informed?

Q. I referred to that with reference to market value of securities, I believe. A. Does that definition still hold good here?

Q. Yes.

[7787] THE WITNESS: In the light of your definition I would doubt very much if that represented the market value.

[7788] Q. What investigation did you make of the reasonable cost or market value of those properties? A. None. I think it is obvious under the condition of the sale that the market value as you have defined it would have been greater than what was there paid in that transaction.

Q. In other words, you are saying that the McCall Company acquired the property at less than market value?

A. Yes, undoubtedly, under your definition of market value, because it is perfectly obvious that Harlow-McGaw were no longer free agents after Harvey Fisk and Sons succeeded in completing the financing.

Q. What do you mean by that? A. I mean simply this: That there was a limited power market within the reasonable reaches of the Susquehanna River and the McCall Ferry development was the most economical site to develop. When that site had been developed it was known by all who were familiar with the river at that time that it would be many, many years before another development could be justified. Subsequent events proved that it was 15 or 20 years before another development was in fact justified, and Harlow-McGaw were simply stuck with this property and they had either to sell it to Fisk or sit there

and hold it without any prospects for a long, long time of getting their money out of it.

[7789] TRIAL EXAMINER: The McCall Ferry Power Company, however, needed those rights, didn't they?

THE WITNESS: No, they didn't have to have them. The option Hutchinson had was adequate for them.

TRIAL EXAMINER: I thought at least some small part of it was necessary.

THE WITNESS: There may be some doubt about that to this extent, Mr. Examiner—

TRIAL EXAMINER: Those Harlow-McGaw rights covered rights to the Susquehanna and Tidewater Canal and Else Island, is that right?

THE WITNESS: By "Those Harlow-McGaw rights" you are speaking now of the ones which came in by actual ownership through Harvey Fisk and Sons?

TRIAL EXAMINER: No, I am referring to the ones that are covered by the valuation of 450,000-some odd dollars.

THE WITNESS: That is the one which came in through Harvey Fisk and Sons?

TRIAL EXAMINER: Yes.

THE WITNESS: McCall Company didn't have any need for Else Island. The project map indicates that Else Island is in the Safe Harbor project.

TRIAL EXAMINER: But the lower part of the Island is beyond [7790] the Safe Harbor project?

THE WITNESS: Yes, but it is also above the backwater of the Holtwood project.

TRIAL EXAMINER: It is?

THE WITNESS: Yes.

TRIAL EXAMINER: What about the Susquehanna and Tidewater Canal?

THE WITNESS: Well, Hutchinson had obtained in his option from Harlow and McGaw the right to flood that canal in that 1903 option. I think it was dated April 14. We referred to it a few minutes ago.

By Mr. HALL:

Q. That option never was exercised? **A.** No, but it was in force at the time Harvey Fisk and Sons bought the water power rights. It could have been exercised.

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[7796] **By Mr. HALL:**

Q. Will you refer to the map in the back of Exhibit No. 26 and point out the properties acquired from Harlow-McGaw? **A.** The properties acquired from Harlow-McGaw by Harvey Fisk and Sons are shown on that map in green.

They consist of the Susquehanna Tidewater Canal, the Proprietors of Susquehanna Canal, and numerous separate parcels lying along the shore and include islands in the Susquehanna River between Wrightsville and Columbia, Pennsylvania, at upstream limit and Havre de Grace, Maryland, at the downstream limit.

Q. Will you indicate what portions of those properties were required for the McCall Ferry project? **A.** The property which was required for the McCall Ferry project—

MR. KING: Excuse me, Mr. Gunn.

You mean at the elevation at which it was built or the elevation considered prior to that time?

MR. HALL: At which it was built, Mr. King.

THE WITNESS: May I ask one question? At which it was built and using flashboards the way they are now used?

By MR. HALL:

Q. Yes. A. With that clarification, the property acquired from Harlow-McGaw by Harvey Fisk and Sons which was required for the [7797] Holtwood development as the Holtwood development was built and is now operated consisted of the section of canal, that is the Susquehanna and Tidewater canal, from a point about a mile below the Holtwood dam extending to a point upstream approximately to the present location of the Safe Harbor dam, as well as a flooding easement over Else Island, to the extent that that island lies downstream of the Safe Harbor dam.

That flooding easement is made necessary because, under certain particular flow conditions which occur at odd intervals of time, a part of the island is flooded.

. . .

Q. You mean flooded by the Holtwood dam backwater?

A. Yes, sir.

Q. What portion of the properties acquired from Harlow-McGaw were useful for the Safe Harbor project? A. That part of the Susquehanna and Tidewater canal which extends from the Safe Harbor dam upstream to Wrightsville, or approximately to Wrightsville, together with the portion of Else Island which lies upstream from the downstream side of the Safe Harbor dam foundation.

Q. Aren't there six other small islands included in the Harlow-McGaw land necessary for the Safe Harbor project?

. . .

[7798] THE WITNESS: Yes, sir, there were, and those other small islands were originally a part of Else Island and have since been broken off and acquired names. That is the reason why they are not shown separately on the map which is a part of Exhibit 26.

By MR. HALL:

Q. In other words, they are included in Else Island on the map? A. That is correct.

Q. Using this map will you generally describe those lands and riparian rights acquired from Harlow-McGaw which lie below the McCall Ferry tailrace?

THE WITNESS: Yes, sir. In order to make that explanation I will have to make a slight amendment to the property I described as being necessary to the Holtwood project. The downstream extent of the Holtwood project would be marked by a line drawn across the river just upstream from the end of Bear Island.

[7799] If you will notice on the east side of the river there is shown two tracts of land in green just upstream from that line. The first tract was acquired as a tract of land separate from the canal by Harlow and thus acquired by Penn Water from Harlow in the transaction between Harlow-McGaw and Harvey Fisk and Sons.

TRIAL EXAMINER: The west side rather than the east?

MR. KING: That is what we think, Mr. Examiner.

THE WITNESS: Yes, sir, it is the west side of the river, Mr. Examiner. I was mistaken.

Just upstream from the tract I just described is another tract of land which was a part of the canal acquired from Harlow-McGaw and which is also used and useful by Penn Water in its Holtwood project.

Now, proceeding to answer your question directly, downstream—

MR. HALL: Is that the Kilgore tract you had reference to, Mr. Gunn?

THE WITNESS: The first one was the Kilgore tract, that is the tract of land laying nearest to the downstream boundary of the Holtwood project that I just described.

Proceeding now to the description of property in answer directly to your question: On the west side of the river there is the canal and canal rights extending from a point near the upstream end of Bear Island to Havre de

Grace, [7800] Maryland, which was a part of Harlow-McGaw and which was not used and useful in the Holtwood project.

Just opposite Bear Island are two separate parcels of land which were acquired in that transaction and which were not used and useful in the Holtwood project.

Continuing downstream to the point where there is indicated the Conowingo Bridge, just below the Pennsylvania-Maryland line, there is another tract of land which was acquired from Harlow-McGaw and which was not used and useful in the Holtwood project.

Continuing further downstream to a point just north of Roberts Island there are two tracts which were not used and useful in the Holtwood project.

Continuing further to the vicinity of Havre de Grace there is there shown another tract. All of the tracts I have just been explaining lie on the west side of the river and downstream from the Holtwood project.

Proceeding now to the east side of the river and downstream from the Holtwood project there are three tracts of land lying between Fishing Creek and a point opposite Johnson Island which were acquired in the Harlow-McGaw transaction and which were not used and useful in the Holtwood project.

Continuing further downstream there are two separate tracts just south of Peters Creek and just north of the [7801] Pennsylvania-Maryland line which were acquired in that transaction and were not used and useful in the Holtwood project.

Just south of the Pennsylvania-Maryland line, beginning at a point identified as Ark Haven, is the canal and canal rights of Proprietors of Susquehanna Canal which extends from Ark Haven to a point identified as Rock Run, which is the head of Tidewater in the Susquehanna River.

In that same area, aside from and in addition to the canal rights, a large tract of land identified as Bell Farm lying on each side of Conowingo Creek and it was acquired

from Harlow-McGaw. It was not used and useful in the Holtwood project.

Continuing further downstream to a point identified as Octoraro Creek and extending upstream is another tract of land acquired from Harlow-McGaw and not used and useful in the Holtwood project.

The property I have now just described lies on the east side of the river.

In addition there was acquired from Harlow-McGaw several islands lying downstream from the boundaries of the Holtwood project, these being Bear Island, opposite Muddy Creek just downstream from the Holtwood project, Johnson Island, lying near the eastern bank of the river and located between Fishing Creek and Peters Creek, an unidentified island [7802] lying about the middle of the river and just downstream from the site of the old Conowingo Bridge, another island identified as Amos Island, lying near the western shore of the river and upstream from the point identified as the present site of the Conowingo Dam.

That, I believe, completes the description of the property acquired from Harlow-McGaw in the Harvey Fisk and Sons transaction and which is now not used and useful in the Holtwood project but located below the boundaries of the Holtwood project.

By MR. HALL:

Q. Is that all, Mr. Gunn? A. I have just noticed that in describing the islands I missed one unidentified island which is located near the eastern shore of the river opposite a point on the east shore of the river, identified as Fites Eddy.

Q. Mr. Gunn, was the name of the second tract of land acquired from Harlow-McGaw which you mentioned as lying within the Holtwood line boundary the Cunningham tract? A. Yes, sir, that is correct.

Q. From your description I take it that there was much more land and riparian rights acquired below the

project boundary of McCall Ferry from Harlow-McGaw than above the project boundary.

[7803] **THE WITNESS:** In making my description of the property acquired from Harlow-McGaw by Fisk, and which is not now used and useful in the Holtwood project, I used the term "Holtwood project boundary" for the want of a better one and described it as being a line drawn across the river approximately at the upstream end of Bear Island.

Now, it is necessary to draw the line of demarkation between the Holtwood project and the downstream project at about that point because the construction of the Holtwood Dam disturbed the river flow, or at least the distribution [7804] of the river flow, down to that point and made it necessary for Holtwood Company to own the water power rights on both sides of the river down to approximately that point at least.

By MR. HALL:

Q. I take it just then, Mr. Gunn, you were answering the Examiner's question or clearing up the question he mentioned.

Now, will you answer the question as to whether or not there is much more land and riparian rights acquired below the McCall Ferry boundary as you have described it from Harlow-McGaw than above that boundary. **A.** By "much more" what do you mean? Footage, acreage, value, or how do you want that "much more" measured?

Q. River front footage and acreage. **A.** It is simply an inquiry as to whether there is more down than upstream?

Q. Yes. **A.** It appears evident that on a front footage or acreage basis a larger proportion of the property acquired from Harlow-McGaw lies downstream from the downstream boundary of the Holtwood project than lies upstream from that boundary.

[7805] Q. The properties below that boundary were those which Harlow-McGaw had intended using for the lower development. Right? A. What lower development, Mr. Hall?

Q. The lower development Mr. Harlow had in mind. A. He had several lower developments in mind.

Q. For any lower developments? A. Well, Mr. Harlow had contemplated a scheme of developing the river all the way from Wrightsville to Havre de Grace, utilizing primarily his canal which consisted of power house "A", so identified on the map, and lying just upstream from the Conowingo Bridge, another power house identified as power house "B", just upstream from the Maryland-Pennsylvania line, another power house identified as power house "C", adjacent to the downstream end of Bear Island. All of those power houses were at one time or another contemplated by Harlow-McGaw for development of that section of the river which is south of the present boundary of the Holtwood development, although power house identified as Harlow power house "C" at the downstream end of Bear Island would have flooded what is now the Holtwood Dam site.

Q. And those Harlow-McGaw properties below the boundary as you have described it now form the major part of the lands in the Conowingo development. Right?

. . .

[7806] THE WITNESS: No, I don't think that would be at all true, Mr. Hall. I say that for this reason: If you will notice the map there are what offhand looks to me to be 50 or 100 islands in the river which were not acquired from Harlow-McGaw.

In addition to that, the canal rights which Harlow-McGaw had were at a low elevation and extensive land rights at a higher elevation than the canal rights, all along both shores had to be acquired in addition to what came from Harlow-McGaw, because the Conowingo development has a head in excess of 90 feet which flooded much more

land in all directions than were acquired from Harlow-McGaw.

[7807] Q. The lands lying below the Holtwood boundary as you have described it constituted a substantial part of the lands now comprising the Conowingo project? A. No, I wouldn't say that, Mr. Hall. Offhand I wouldn't say it was even a substantial part, though it would take a thorough investigation to determine that. I can say that what was acquired from Harlow-McGaw by Harvey Fisk and Sons, and was used in the Conowingo project, is all of Harlow-McGaw property that I have described which lies upstream of a point at the mouth of Octoraro Creek and downstream from the downstream boundary of the Holtwood project. I think that is about all you can say.

If I had to characterize it I would say it was not a very great proportion of the water power rights which were ultimately required for the Conowingo project.

Q. What lands did Susquehanna Power Company seek to acquire through condemnation in 1906?

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THE WITNESS: As I understand it it was all of the lands lying in Maryland which were then owned by McCall Ferry Power Company and which had been acquired from Harlow-McGaw by Harvey Fisk and Sons.

By MR. HALL:

Q. Did McCall Ferry own any lands in Maryland not [7808] acquired from Harlow-McGaw? A. Not so far as I know. At least they didn't hold any along the river. They held some transmission line rights-of-way but that had nothing to do with the river.

Q. For what purpose did Susquehanna Power Company seek to acquire the land in Maryland? A. Hydro-electric power development as I recall it.

Q. I take it from what you said Susquehanna did not want all of the land below the McCall Ferry boundary but only the land lying within the State of Maryland? A. I

don't know that you could draw that conclusion, but the condemnation proceeding we previously talked about was a Maryland condemnation and obviously they couldn't condemn Pennsylvania property in a Maryland court. I wouldn't say it followed from that that they didn't want the property in Pennsylvania, because I think they did.

Q. Mr. Gunn, isn't it a fact that the proposed Susquehanna Power Company dam was proposed to be erected to elevation 65 and would flood only to the Pennsylvania line?

[7809-7810] Mr. Gunn, I was speaking of Harlow's plans at the time of condemnation. A. I know you were. I say that Harlow at one time or another considered several alternative ways of developing the river, and I can't recall which one he was contemplating at the time this condemnation was brought.

If you will refer to the map in Exhibit 26 you will see that Harlow's scheme "A" contemplated a powerhouse just above the Conowingo bridge.

Now, it may have been that he was contemplating the development of that site first, in which event he may have intended to flood back about to the Pennsylvania line with that project and then, following that, to develop what is identified as Harlow Powerhouse "B", just north of the Pennsylvania line, and with that development utilize the remainder of the rights which Harlow-McGaw had formerly owned which lay within the State of Pennsylvania. As I said, I cannot remember on what scheme for the development of the river Harlow was working in 1906 when they undertook that condemnation proceeding.

I do know this: That McCall Ferry had intentions of developing the reaches of the river below the McCall Ferry [7811] site, and when they negotiated the railroad relocation agreement you probably recall they had a provision in there relating to the rundown, that is the grade, of the relocated Pennsylvania track below the McCall Ferry dam which provided that an unduly or unacceptably steep grade

be used in that rundown pending the time, and I think there was a time limit on it, when McCall Ferry would develop another project downstream from Holtwood and at which time they would eliminate the undesirable grade left after the completion of the Holtwood project.

By MR. HALL:

Q. Why was McCall Ferry unwilling to sell the lands which Susquehanna Power Company sought to condemn?

A. I don't know, but I should think there would be several reasons why. I imagine one reason was they wanted to get more money than Harlow-McGaw or Susquehanna Power Company had offered. As I said, they also had plans for developing the lower reaches of the river themselves, and there may have been any number of reasons why they didn't want to sell them. I should think those would be two of the reasons.

Q. Mr. Gunn, did Susquehanna Power Company succeed in condemning the land? [7812] A. That is rather

difficult to say. They succeeded in the lower courts, I believe, and then I believe McCall Ferry appealed the case, and while the appeal was pending mutually satisfactory settlement was worked out by all the interests on the river, they being what we referred to as the Welch interest on the lower reaches of the Susquehanna River, above Havre de Grace, and the Susquehanna Electric Power interests lying north of the Welch interest, and the McCall Ferry interests lying, as we have described them, as having been acquired from Harlow-McGaw.

By MR. HALL:

Q. As a result of the condemnation suit you know, do you not, that Bertron, Storrs and Griscom began secret negotiations to secure control of Susquehanna Power Company?

THE WITNESS: Yes, they began negotiations. Now as to the secret part of it, it was secret, I believe, so far as DeVictor, who represented Susquehanna Power Company, was concerned, but it was no secret so far as McCall Ferry Power Company was concerned.

By MR. HALL:

Q. In other words, you are saying—go ahead. [7813]

A. The facts concerning that negotiation are set forth in considerable detail beginning at page 107 of Exhibit 26.

Q. In other words, you are saying Bertron, Storrs and Griscom in that transaction were acting in behalf of McCall Ferry Power Company, or acting in the interest of McCall Ferry Power Company? **A.** I don't know just how to describe it.

THE WITNESS: Bertron, Storrs and Griscom represented McCall Ferry interests in working out the agreement under which the three downriver interests, that is the Susquehanna Power Company, Susquehanna Electric Power Company, and McCall Ferry Power Company, were consolidated. However, it appears that in the acquisition of control of Susquehanna Electric Power Company, which Bertron, Storrs and Griscom had acquired, Bertron Storrs and Griscom appeared to have been acting in their own behalf because, respecting that transaction, they merely notified McCall Ferry Power Company that they had acquired that control.

All of the facts concerning that are set forth on page 107 of Exhibit 26.

[7814] **By MR. HALL:**

Q. While Bertron, Storrs and Griscom did not succeed in securing control of Susquehanna Power Company they did succeed in securing control of Susquehanna Electric Power Company, which was a competitor, for a lower river development. Right? **A.** Yes, sir.